

Group I, claims 1 and 5 and 15 in part, drawn to a protein and a kit comprising the protein;

Group II, claims 2-4, 11, 12 and 5 and 15 in part, drawn to a nucleic acid and kit comprising the nucleic acid; and

Group III, claim 6 in part, drawn to a method of using a protein;

Group IV, claim 6 in part, drawn to a method of using a nucleic acid;

Group V, claim 7 in part, drawn to a method of diagnosis with a protein;

Group VI, claim 7 in part, drawn to a method of diagnosis with a nucleic acid;

Group VII, claim 8, drawn to a method of screening a library;

Group VIII, claim 9, drawn to a method of synthesis of a drug;

Group IX, claim 10, drawn to a drug;

Group X, claims 13 and 15 in part, drawn to an antibody and kit comprising such;

Group XI, claim 14, drawn to a cell expressing an antibody;

Group XII, claim 16, drawn to a gene therapy method; and

Group XIII, claim 17, drawn to a method of using a nucleic acid.

Applicants respectfully traverse. Applicants respectfully submit that regardless of the Examiner's citation of Motoyama (Nature Genetics 18:104-106, 1998) there would not be an undue burden of search and/or consideration for the Examiner to examine claims 1-17 in their entirety. Regardless, certain combinations of different categories of claims are permissible pursuant to PCT Rule 13. For instance, PCT Rule 13 specifically permits the following grouping of claims:

- (A) In addition to an independent claim for a given product, and independent claim for a process specially adapted for the manufacture of the said product, and in independent claim for a use of the said product.

The Examiner has completely ignored this teaching (for instance, as explained in MPEP §1850C; see page 1800-62 of the original eighth edition August, 2001 MPEP). Many groups of claims fall within this category as explained below.

In order to be fully responsive to the outstanding Office Action, Applicants hereby elect Group II, directed to claims 2-4, 11, 12, 5 and 15 in part, drawn to a nucleic acid and a kit comprising the nucleic acid. This is an election with traverse.

In view of the above discussion relating to combinations of categories of claims, Groups IV, VI, XII, and XIII should be combined with Group II. Thus, in addition to examining claims 2-4, 11, 12, 5 and 15 the Examiner should at the very least

further search and consider claim 6 in part (drawn to a method of using a nucleic acid), claim 7 in part (drawn to a method of diagnosis with a nucleic acid), claim 16 (drawn to a gene therapy method), and claim 17 (drawn to a method of using a nucleic acid). If the Examiner chooses not to search and consider a method of using claims at this point Applicants remind the Examiner that when a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all of the limitations of the allowable product claim should be rejoined pursuant to MPEP §821.04.

Favorable action on the merits is requested.


If the Examiner has any questions or comments, please contact the undersigned at the offices of Birch, Stewart, Kolasch & Birch, LLP.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees

,required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17;  
particularly, extension of time fees.

Respectfully submitted,

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